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June 20, 2005

**BY OVERNIGHT DELIVERY AND VIA ECFS**

Shaun Maher  
Federal Communications Commission  
Room 2-A820  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: Multimedia Holdings Corporation  
KUSA-DT, Denver, CO (Facility ID 23074)  
**MR Docket No. 03-15**  
Request for Wavier of DTV Replication/Maximization Deadline

Ladies and Gentlemen:

Multimedia Holdings Corporation ("MHC"), a wholly-owned subsidiary of Gannett Co., Inc., is licensee of broadcast television station KUSA-TV and permittee of KUSA-DT, Denver, Colorado. This letter requests a waiver of the DTV replication/maximization deadline for KUSA-DT due to reasons beyond MHC's and KUSA-DT's control, as described in the attachment.

The Commission is aware of extensive and ongoing zoning issues at Lookout Mountain, Colorado, which continue to prevent Denver television broadcasters from constructing and operating permanent DTV facilities. Currently, KUSA DT operates reduced DTV facilities pursuant to Special Temporary Authorization at a temporary location in downtown Denver. Due to interference issues, it cannot operate full, maximized DTV facilities at such temporary location.

For these reasons, which are detailed in the attachment, KUSA-DT will be unable to operate at full power by the Commission's deadline of July 1, 2005, and MHC cannot foresee when these issues will be resolved. Therefore, MHC respectfully requests that the Commission extend the DTV maximization/replication deadline for KUSA-DT.

Currently, KUSA-DT operates, pursuant to Special Temporary Authorization, at reduced power. On June 1, 2005, MHC filed a request for extension of this STA, which will expire July 1, 2005. An FCC date-stamped copy of that application/request is attached to this filing for the Commission's reference.

Neither MHC nor any party to this request is subject to denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a.

If further information is required, please contact the undersigned.

Sincerely,



David P. Fleming

Attachment

72006

## **STATUS REPORT ON LAKE CEDAR GROUP MULTI-USER TOWER ON LOOKOUT MOUNTAIN**

The Commission is well aware of the long history of the Lookout Mountain zoning litigation, as set forth in prior requests for extension of time to construct, and will not be repeated here. The present status is as follows:

On September 17, 2003, the City of Golden, CARE and other parties (the "Plaintiffs") filed a Complaint with the District Court, County of Jefferson, Colorado, seeking review of the Jefferson County Board of Commissioners' rezoning determination, along with a claim for preliminary and permanent injunction and declaratory relief (Case No. 03 CV 3045). LAKE CEDAR filed a motion seeking dismissal of the injunction claims and the declaratory judgment claim. On December 12, 2003, the Court dismissed the declaratory judgment claim but allowed the injunction claims to proceed. LAKE CEDAR filed an Answer to the Complaint on December 22, 2003.

On January 16, 2004, Plaintiffs filed a Motion to Stay the Effect of the Zoning Resolution and for Preliminary Injunction seeking to enjoin the Board from issuing development and building permits and seeking to enjoin LAKE CEDAR from continuing development and construction of the new tower. Plaintiff's Motion also sought to stay the effect of the Board's August 19, 2003 grant of rezoning. The LAKE CEDAR Opposition to the Motion was filed on February 2, 2004 and Plaintiff's Reply was filed on February 17. A one-day hearing on the Motion was heard on March 26, 2004 at the conclusion of which District Judge R. Brooke Jackson enter a preliminary stay order enjoining the County from allowing Lake Cedar to begin construction of its proposed multi-user telecommunications tower pending: (1) the County permitting Plaintiffs to respond in a meaningful way to certain so-called "late-filed" documents; and (2) the County receiving and considering competent evidence on the "guy wire failure" issue.

In accordance with the Court's order, after notice as provided by law, the Jefferson County Board of Commissioners held further hearings on August 12 and August 17, 2004, for the taking of evidence and the hearing of argument on the two issues specified by the Court and on August 31, 2004, for the purpose of rendering a decision. On August 31, the Board found that "the applied for rezoning is in its (sic) best interest of the health, safety, morals, convenience, order, prosperity and welfare of the residents of Jefferson County" and unanimously voted to adopt the resolution approving the rezoning of the Lookout Mountain site to accommodate the Lake Cedar tower as proposed in the Site Development Plan.

On September 3, 2004, Lake Cedar filed with the Court a Status Report requesting confirmation that the County's further hearing and decision complied with the Court's order of March 26, 2004 and that the stay order was lifted by its own terms. Jefferson County on September 7, 2004 joined in the Lake Cedar Status Report stating "the Board believes it has fully complied with the Court's 'stay order,' and agrees [with Lake Cedar] that the stay order should be vacated" and sought the Court's "guidance with regard to scheduling further proceedings. . .

.” By handwritten order of September 13, 2004, Judge Jackson ruled that “the parties may re-brief the issue and/or set another hearing. The Court will not lift the stay based upon the defendant’s request alone (without complying w/ C.R.C.P. 121 §1015(8) either).”

On September 20, 2004 Lake Cedar filed a Motion to Lift Stay which was joined in by the County and opposed by Plaintiffs. On September 29, 2004, Plaintiffs filed a Motion for Leave to File an Amended Complaint. After the receipt of other pleadings, Judge Jackson, on October 25, 2004, issued an Order stating:

The [Jefferson County] Board has since conducted additional hearings and has reaffirmed its decision to permit Lake Cedar to proceed with construction. Lake Cedar wants the preliminary injunction lifted. Plaintiffs oppose the motion. They note that the Board has not yet certified a record of its additional hearings. They argue that the certified record will demonstrate that the Board has still not received competent evidence concerning the guy wire issue, and that it makes no sense to dissolve the preliminary injunction with a permanent injunction hearing yet to come.

Given plaintiffs’ representation as to what the certified record will demonstrate concerning the guy wire issue, the Court at this time denies the motion to lift the stay. I caution plaintiffs, however, to keep in mind the narrow focus of the remand order and the limited jurisdiction of courts in respect to review of administrative action under C.R.C.P. 106(a)(4).

The Court directs the Board to certify the record as soon as possible, and it directs the parties to set a permanent injunction hearing promptly after the record is certified. If it appears that the plaintiffs are not complying with the latter direction, the Court may reconsider this order. To the extent plaintiffs’ motion for filing a certification of record is not rendered moot by the foregoing direction to the Board, it is denied. The Court’s intent is that the Board certify a record of the proceedings on remand, as a supplement to the record previously certified.

Plaintiffs’ motion for leave to amend the complaint is denied.

The Jefferson County Board of Commissioners certified the record of the proceedings on remand and the issues concerning whether the Court should issue a permanent injunction prohibiting the Board from allowing construction of the proposed tower was fully briefed by the parties. Counsel for appellant City of Golden set a permanent injunction hearing for July 22, 2005.

By Order of May 4, 2005, noting that the rule governing the appeal does not permit the submission of new evidence and that it had the record and the parties’ briefing of the legal arguments, the Court found “that another hearing would not be of material assistance to the Court in resolving the issues presented. Accordingly the Court vacates the scheduled July 22, 2005 hearing.”

The May 4 Order points out that the briefs of plaintiffs with regard to their request for a permanent injunction now refer to that portion of §15.F.2.b(2) of the County's regulation which states that "Where more than one tower is located on a site, the set back between such towers shall be sufficient to prevent multiple failures in the event one tower fails." The Order summarizes plaintiffs' argument as follows:

Plaintiffs envision three scenarios in which they say the "multiple tower failure" problem could occur: (1) the new 730-foot tower could fall onto the existing Channel 4 tower that is 683 feet away; (2) the new tower or its guys could sever the guy wire of the Channel 4 tower, which might fall on an occupied home that is within 200 feet of the base of that tower; (3) Channel 4 tower could fail and sever the guy wires supporting the new tower. However, to the extent that these scenarios do not threaten harm to any person or to any property other than the towers themselves, as appears to be the case with number 3 and possibly number 1, they do not support the plaintiffs' position. The towers are the property of television stations or their Lake Cedar consortium. It is explicit in the first sentence of §15.F.2.b.(2), and at least implicit in the remainder, that the purpose of the regulation is the protection of the public and the protection of property other than the property of the tower owners. Plaintiffs are not in a position to assert potential damage to the towers of owners as a basis to resist construction of the new tower.

Plaintiffs' argument is perhaps best stated in their description of scenario number 2:

As is evident from the Lake Cedar site plan, the guy wires supporting the Channel 4 tower are even closer to the base of the HDTV Tower mast: a distance of only 220 feet. R. 13178. (Set Back drawing); R. 15208 (Barrett Presentation) & R. 15287 (Setback Drawing). Lake Cedar's own witnesses have acknowledged in written and oral testimony that the Channel 4 tower guy wires are within the radius of debris fall and failure of the HDTV Tower. R. 13392 (Malouf Report) & R. 15945 (Malouf testimony)(testimony that conservatively estimated tower fall debris radius is 80% of tower height, which in this case, is 584 feet). *Failure of the HDTV Tower or its guy wires during the construction could sever the east guy wires of the Channel 4 tower, which would likely cause the 843 foot Channel 4 tower to fall to the west, where the nearest occupied home is only 300 feet from the base of that tower (well within the 80 percent of tower height that Lake Cedar's witnesses admit constitutes the 'fall zone')*. R. 13178. (Emphasis added by Court).

The key conclusion is that failure of the new tower could sever the east guy wires of the Channel 4 tower, which in turn would 'likely' cause the Channel 4 tower to fall to the west, which in turn might impact an occupied home. The citations to the record are to maps and the Malouf report and testimony. However, there is no express support in these

portions of the record for plaintiffs' conclusion. Plaintiffs apparently infer that the Channel 4 guy wire could be severed, and if so, that the Channel 4 tower would likely fall into the area where there is an occupied home. However, the inference is neither an obvious nor a necessary one from the evidence cited.

\* \* \*

Because the Court cannot find from the record that the Board has received 'competent evidence' on this point, the Court must one again remand the case to the Board for the consideration of further evidence. The remand is a limited one, and the Court does not invite either party to invent new arguments not previously addressed. If competent evidence is presented to the Board that the tower set back is sufficient to prevent multiple tower failures from impacting occupied dwellings, and the Board once again affirms the rezoning decision, then the Court will lift the stay and deny a permanent injunction. If such evidence cannot be presented, then Court will grant the injunction. I do not like having this case dragging out any longer, but the law is what it is. The Court orders that the remand proceed in an expeditious manner so that the matter can be resolved as soon as possible.

After making it clear that the above issue is the only issue remaining, the Court stated the following:

To persons of interest on both sides of these issue it might seem strange that this case focuses on relatively improbably events such a multiple tower failure rather than on more fundament health and enjoyment of life issues that are really at the heart of plaintiffs' opposition to the tower. The reason quite simply is that the tower opponents have had their hearing on those issues in the forum that exists for that purpose, i.e. the Board of County Commissioners, and they lost in that forum. They are left to argue what they can in the courts, even if the points they are arguing now are not the points that the affected segments of the public most care about.

It is anticipated that the further hearing before the Board of County Commissioners on the single issue raised by the Court will be held within the near future.

When the permanent injunction is lifted, it is expected that Jefferson County will formally approve the Lake Cedar Site Development Plan and record it. All other steps in the Site Plan approval process have been completed. At that time, Lake Cedar will file for the necessary building permit. All documentation for the building permit is complete and ready for filing. Neither will be issued, however, until the Court's injunction is lifted. Construction will start as soon as is reasonably practical after the required permits are issued (weather permitting).

The status of the design and equipment is as follows:

Tower: the purchase contract has been signed and the tower design work has been completed and paid for.

Antennas/Transmission Line: the purchase contract with Dielectric Corp. for the antennas has been signed and the design completed and the antennas are ready for manufacture. The transmission line has been purchased and is in storage.

Building/Site Preparation: the general contractor contract with Calcon Construction has been signed. Construction documents are complete and have been filed with the local authorities which have completed review. All significant materials and services bids are complete and subcontractors selected. The structural steel for the tower has been purchased. The Site Plan is complete, including location of access passages for trucks and materials and construction can proceed with minimal notice.

It should be noted that Lake Cedar has placed in escrow, for the benefit of the County, \$551,113 to guaranty the removal of the existing towers and buildings and \$831,942 to guaranty completion of the quasi-public improvements required by the Site Development Plan at the site.

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David P. Fleming  
Senior Legal Counsel, Gannett Co., Inc.  
General Counsel, Gannett Broadcasting



June 1, 2005

**VIA OVERNIGHT DELIVERY TO MELLON BANK**

Federal Communications Commission  
Mass Media Services  
P.O. Box 358165  
Pittsburgh, PA 15251-5165

Re: Multimedia Holdings Corporation  
KUSA-DT, Denver, CO (Facility ID 23074)  
Extension of Reduced Power Digital Television STA  
FCC File No. BEDSTA-20050404AEX

Ladies and Gentlemen:

Multimedia Holdings Corporation ("MHC"), a wholly-owned subsidiary of Gannett Co., Inc., is licensee of broadcast television station KUSA-TV and permittee of KUSA-DT, Denver, Colorado. KUSA-DT is operating reduced facilities pursuant to Special Temporary Authorization originally granted October 8, 2002. This STA was recently extended on May 25, 2005 for a period of five (5) weeks, and will expire on July 1, 2005.

The Commission is aware of extensive and ongoing zoning issues at Lookout Mountain, Colorado, which continue to prevent Denver television broadcasters from constructing and operating permanent DTV facilities. Currently, KUSA-DT operates reduced DTV facilities pursuant to STA at a temporary location in downtown Denver. Due to potential interference issues, KUSA cannot operate full, maximized DTV facilities at this temporary location. Further, MHC cannot foresee when the Lookout Mountain zoning issues will be resolved. A status of the zoning proceedings is provided on the attachment.

MHC is aware that the Commission required stations in markets 1-30 (Denver's market size is 18) to fully maximize/replicate the analog signal by January 1, 2003. Due to these zoning issues, however, KUSA was unable to meet this deadline, and therefore the Commission routinely renewed KUSA-DT's reduced power STA. Because the zoning issues persist, KUSA-DT will be unable to meet the July 1, 2005 maximization/replication deadline for stations in markets 31-100, and therefore requests that the Commission extend its reduced power STA for another six (6) month period after the July 1, 2005 expiration.



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**David P. Fleming**  
Senior Legal Counsel, Gannett Co., Inc.  
General Counsel, Gannett Broadcasting



Neither MHC nor any party to this request is subject to denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a.

Enclosed are FCC Form 159 and payment information for charging the appropriate application fee (\$150.00) to an authorized charge account.

If further information is required, please contact the undersigned.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. P. Fleming', with a long, sweeping horizontal line extending to the right.

David P. Fleming

Enclosure

#65226